THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.22552 OF 2001

DATED: 04.10.2007

Between:

B.Mahesh S/o B.Subramanyam
R/o 1-2-234-13-65
Road No.7, Gaganmahal Road
Arvindnagar, Hyderabad

…Petitioner

A n d

The Government of Andhra Pradesh
Roads & Buildings Department
NH Division, Kurnool represented by
Executive Engineer and another

…Respondents

THE HON'BLE MS.JUSTICE G.ROHINI

WRIT PETITION No.22552 OF 2001

ORDER:

This writ petition is filed seeking a declaration that the proceedings of the second respondent-Executive Engineer (R&B), N.H. Division, Kurnool, dated 22.9.2001, directing the petitioner herein to pay Rs.16,05,745/- towards seigniorage charges together with five times penalty for the work executed by him under the agreement dated 30.12.1996, as arbitrary and illegal.

The facts, in brief, are as under:

Pursuant to the tenders invited by the Superintendent Engineer (R&B), NH Division, Kurnool, for execution of the work relating to widening of existing 5.50 M wide carriage way two lanes with strengthening in KMs 270/0 to 282/4 of Chittoor-Kurnool section of NH-18, the petitioner, being the lowest tenderer, was awarded the contract under agreement dated 30.12.1996. As per the said agreement, the petitioner remitted Rs.15/- per one cubic metre in respect of rough stones and Rs.5/- per cubic metre for gravel towards seigniorage charges. Accordingly, the work was completed and the final bill was also settled on 3.9.1999. Thereafter, the second respondent issued notice dated 24.2.2001 informing the petitioner that as per the remarks of the audit party, the seigniorage charges were required to be collected at the rates stipulated in G.O.Ms.No.154 Industries and Commerce Department dated 23.7.1996, i.e., Rs.25/- per cubic metre

for metal and Rs.10/- per cubic metre for gravel since the said rates were in force at the time of execution of the work awarded to the petitioner. Immediately, thereafter, by letter dated 21.3.2001, the petitioner was informed that since he failed to remit the amount as demanded in the notice dated 24.2.2001, a sum of Rs.2,84,340/- was being adjusted from the deposits held by in the division under various other works. Aggrieved by the said action of the respondents, the petitioner filed W.P.No.57582 of 2001. After hearing both the parties, the said writ petition was allowed, by order dated 14.8.2001 holding as under:

> "The respondents having entered into the agreement on 30-12-1996 wherein it was agreed to collect @ Rs.15/- per cubic meter for stones, gravel etc., and @ Rs.5-00 per cubic meter for gravel, is now estopped to demand @ Rs.25-00 per cubic meter for stones gravel etc., and @ Rs.10-00 per cubic meter for gravel. The demand raised by the respondents under the impugned proceedings is totally unsustainable. The impugned proceedings dated 24-2-2001 and 21-3-2001 are therefore quashed and the Writ Petition is allowed. No order as to costs".

Admittedly, the said order has become final. Pursuant thereto, the petitioner made an application to the second respondent for release of the amount of Rs.2,84,340/- which was withheld under the proceedings dated 21.3.2001. However, instead of releasing the amount, the impugned proceedings dated 22.9.2001 were issued holding that since the petitioner failed to produce evidence to show that he had paid seigniorage charges to the Government as envisaged in G.O.Ms.No.243, dated 8.5.1986, he was liable to pay Rs.16,05,745/- towards seigniorage charges together with five times penalty. Challenging the said action of the second respondent, the

present writ petition has been filed.

In the counter affidavit filed by the second respondent, it is stated that by the date of execution of the contract in question, dated 12.1.1996, since G.O.Ms.No.154 dated 23.7.1996, prescribing seigniorage charges at Rs.25/- per cubic meter for metal and Rs.15/- per cubic meter for gravel was already in force, the petitioner is liable to pay the seigniorage charges at the said rates. It is further stated that as per the conditions stipulated in the tender notification and the agreement, the petitioner has to produce the evidence in "Transit form" having paid the seigniorage rates on mineral direct to the Mines & Geology Department. Since such evidence was not produced, but on the other hand, the petitioner requested the respondent to recover one time seigniorage rates and also gave an undertaking to refund five times of penalty on receipt of clarification regarding the applicability of G.O.Ms.No.23 I&CAD dated 5.3.1999, the impugned proceedings were rightly issued in accordance with the clarification received from the first respondent.

I have heard the learned counsel for both the parties and perused the material on record.

Rule 26 of A.P. Mineral Concession Rules, 1966 provides for payment of seigniorage charges to the Mines Department for the mineral consumed. As per Sub-rule (3)(ii) of Rule 26 inserted by G.O.Ms.No.243, dated 8.5.1986, where the person fails to produce documentary proof in token of having paid the mineral revenue due to the government, he shall be liable to pay five times of the normal seigniorage fees as penalty in addition to the normal seigniorage fees applicable under the Rules. Rule 12 (g)(i) of the Rules provides that every leaseholder shall pay seigniorage fees as per the schedules I and II of Rule 10 of the Rules.

It is not in dispute that the agreement in favour of the petitioner dated 30.12.1996 contained a specific condition in terms of Rule 26(3)(ii) of the Rules, which runs as under:

> "As per the conditions stipulated in the tender notification and agreement the petitioner has to produce the evidence in form of transit form having paid the seigniorage rates on mineral direct to the Mines and Geology Department"

However, during the period of contract, G.O.Ms.No.23, dated 5.3.1999 was issued, according to which, the contractors are no longer required to produce clearance certificate from the Mines Department and the seigniorage charges will be deducted by the concerned works Department from the bills of the contractor for the materials used on the work.

The case of the respondents is that the petitioner is bound by the conditions stipulated in the agreement under which he was required to produce the evidence in the form of transit with regard to payment of seigniorage charges to the Mines and Geology Department. It is stated in the counter-affidavit that the petitioner failed to comply with the said condition and did not produce the evidence in the form of transit to show the payment of seigniorage charges to the Mines and Geology Department but, on the other hand, requested the respondents to recover the seigniorage charges from his final bill. Thus, it is clear that the petitioner failed to pay the seigniorage charges to the Mines and Geology Department as agreed under the agreement, and therefore, he is liable to pay the charges with five times penalty.

From the material on record as well as the submissions made by the learned counsel for the parties, it is clear that there is no dispute about the rate of seigniorage charges payable by the petitioner. The respondents did not dispute the fact that as per the order of this Court

in W.P.No.5758 of 2001 dated 14.8.2001 they are entitled to collect the seigniorage charges only at the rate of Rs.15/- per cubic meter in respect of rough stones and Rs.5/- per cubic meter for gravel. The respondents are also not disputing the fact that the seigniorage charges at the above rates have already been recovered from the petitioner's bills, as pleaded in the counter-affidavit in W.P.No.5758 of 2001. However, the whole controversy is with regard to the stage at which such payment is to be made.

As noted above, as per the terms and conditions of the agreement, the seigniorage charges are payable to the Department of Mines and Geology and the documentary evidence in proof of such payment has to be produced as per Rule 26(2) of the Rules. The validity of the said Rule was upheld by a Full Bench of this Court in **L. Venkateswara Rao v. Singareni Collieries Co., Ltd.,** (1993 (3) ALT 1999). The consequence of failure to comply with the said condition was also provided under the terms and conditions of the agreement, according to which the petitioner shall pay the charges with five times penalty.

However, having regard to the fact that Rule 26(3)(ii) was subsequently amended under G.O.Ms.No.23, dated 5.3.1999, it appears that the respondents sought a clarification from the Government as to whether the procedure prescribed under G.O.Ms.No.23, dated 5.3.1999 is applicable to the works under progress. Pending such clarification, the petitioner gave an undertaking dated 3.9.1999 stating that he will abide by the clarification to be issued by the Government.

Though nothing has been placed before this Court by the respondents to show that any such clarification is received from the Government on the basis of G.O.Ms.No.23 dated 5.3.1999, it is

contended by the learned Government Pleader that the petitioner is liable to pay the seigniorage charges with penalty.

Be that as it may, the fact that the petitioner was not put on notice about the levy of penalty before passing the impugned proceedings dated 22.9.2001 is not in dispute. Since the impugned levy of penalty is in the nature of civil consequences, the principles of natural justice require affording a reasonable opportunity to the petitioner to make his representation against the impugned action. Moreover, since Rule 26(3)(ii), which was in operation at the time of execution of the agreement in favour of the petitioner, provided for payment of seigniorage charges to the Mines & Geology Department, it is all the more necessary to provide an opportunity to the petitioner to establish that such payment was made.

Since, admittedly, no such opportunity was given to the petitioner, the impugned order being violative of the principles of natural justice is here by set aside.

The writ petition is accordingly disposed of leaving it open to the respondents to pass appropriate orders afresh in accordance with law after affording an opportunity to the petitioner to submit his explanation against the proposed levy of penalty. No costs.

6.10.2007.

Kgr

Note:

Issue CC in one week.